

KENNETH C. EICHNER

IBLA 81-422

Decided August 3, 1981

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. AA-39561 through AA-39563.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file on or before Oct. 22, 1979, in the proper BLM office, a copy of the notice of location, or the claim will be conclusively deemed to have been abandoned and declared void.

APPEARANCES: Kenneth C. Eichner, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Kenneth C. Eichner has appealed from a decision dated August 4, 1980, by Alaska State Office, Bureau of Land Management (BLM), declaring his Ptarmigan Nos. 39 through 41 lode mining claims abandoned and void for failure to comply with recordation requirements under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a) and (d). Specifically, the decision states that on November 1, 1979, location notices were filed for the claims, all of which were located in 1958, and that no filing fees accompanied the notices. It declared the claims abandoned and void because the location notices were filed after the October 22, 1979, deadline and because no filing fees were submitted.

Appellant does not deny that the location notices were untimely filed. He states, however, that the filing fees he intended for these

claims were credited by BLM to other claims previously filed, and that the inadvertence originated in the office of the recorder, Wrangell recording district. Because appellant admits the untimely filing of the location notices, we do not reach the question of the fees, for the following reasons:

[1] The dispositive regulation, 43 CFR 3833.1-2(a), provides in relevant part:

The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law.

43 CFR 3833.4(a) specifies the penalty for failure to satisfy the filing requirements of section 3833.1-2(a): "The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void."

The statutory and regulatory mining recordation requirements are mandatory and a failure to comply therewith must result in a finding that the claims are void. Reg Whitson, 55 IBLA 5 (1981); Robert Alameda, 48 IBLA 178 (1980); John Walter Chaney, 46 IBLA 229 (1980). Even if filing fees had been submitted with appellant's November 1 filings, or could somehow have been credited thereto, the claims would still have to have been declared void because the notices were filed after the statutory deadline date.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

